

From that Order, respondent appeals and in its application for review raised the issues of whether the respondent and its insurance carrier received proper notice of the preliminary hearing; whether the Administrative Law Judge erred in determining claimant's

weekly temporary total disability compensation rate was \$366 per week; and, whether the Administrative Law Judge erred in awarding the temporary total disability benefits payable from March 25, 1999. But in its brief, the respondent only argues that the Administrative Law Judge erred in finding claimant was entitled to the maximum compensation rate of \$366 per week for payment of temporary total disability benefits. Therefore, this is the only issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board makes the following findings and conclusions:

The preliminary hearing statute authorizes the Administrative Law Judge to grant or deny a request for temporary total disability compensation.¹ The Appeals Board finds implicit in granting the authority to decide a claimant's request for temporary total disability payments is the authority to make a determination of claimant's weekly compensation rate. Therefore, the Appeals Board concludes, at this stage of the proceedings, the Administrative Law Judge did not exceed his jurisdiction and the Appeals Board does not have jurisdiction to review a preliminary hearing finding in regard to temporary total disability compensation.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of Administrative Law Judge John D. Clark's August 5, 1999, preliminary hearing Order should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Jeffrey T. Tevis, Wichita, KS
Daniel N. Allmayer, Olathe, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 1998 Supp. 44-534a.